#### 107TH CONGRESS 1ST SESSION

# H. R. 112

To prohibit the making, importation, exportation, distribution, sale, offer for sale, installation, or use of an information collection device without proper labeling or notice and consent.

### IN THE HOUSE OF REPRESENTATIVES

January 3, 2001

Mr. Holt introduced the following bill; which was referred to the Committee on Energy and Commerce

## A BILL

To prohibit the making, importation, exportation, distribution, sale, offer for sale, installation, or use of an information collection device without proper labeling or notice and consent.

- 1 Be it enacted by the Senate and House of Representa-
- 2 tives of the United States of America in Congress assembled,
- 3 SECTION 1. SHORT TITLE.
- 4 This Act may be cited as the "Electronic Privacy Pro-
- 5 tection Act".

### SEC. 2. PROHIBITIONS RELATING TO INFORMATION COL-

3 (a) Prohibition.—It is unlawful for any person to 4 knowingly make, import, export, distribute, sell, offer for 5 sale, install, or use an information collection device in a 6 manner that violates any regulation issued under sub-7 section (b).

### (b) Regulations.—

- (1) IN GENERAL.—Not later than 120 days after the date of the enactment of this Act, the Federal Trade Commission shall issue regulations that make it unlawful under subsection (a) for any person—
  - (A) to knowingly make, import, export, distribute, sell, or offer for sale an information collection device, unless the device has a label that discloses in a manner that is readily apparent and understood that the device may transmit from a computer information that is identifiable to that computer, to a primary user of that computer, or to an individual who operates that computer but is not a primary user thereof;
  - (B) to knowingly install an information collection device on a computer that is not under general management and control of that

1	person, unless that person in accordance with
2	regulations issued under paragraph (2)—
3	(i) has given a primary user of that
4	computer notice of such installation; and
5	(ii) after providing such notice to a
6	primary user, has obtained the consent of
7	the primary user to such installation; or
8	(C) to knowingly use an information collec-
9	tion device to transmit from a computer that is
10	not under general management and control of
11	that person, any information that is identifiable
12	to that computer, to a primary user of that
13	computer, or to an individual who operates that
14	computer but is not a primary user thereof, un-
15	less that person in accordance with regulations
16	issued under paragraph (2)—
17	(i) has given a primary user of that
18	computer notice that the device may trans-
19	mit such information; and
20	(ii) after providing such notice to a
21	primary user, has obtained consent by the
22	primary user to such a transmission.
23	(2) Notice and consent.—For purposes of
24	notice and consent required by paragraph (1), regu-
25	lations shall require that—

1	(A) notice be given and consent be ob-
2	tained for each instance of installation or use of
3	an information collection device; and
4	(B) consent is effective only if the person
5	obtaining the consent has a good faith belief
6	that the person giving the consent—
7	(i) has attained 18 years of age; and
8	(ii) has authority to give such consent.
9	(c) Limitation on Application of Regula-
10	TIONS.—Regulations issued under subsection $(b)(1)(A)$
11	shall not prohibit the making, importation, exportation,
12	distribution, sale, or offer for sale of any information col-
13	lection device made before the date of the enactment of
14	this Act.
15	(d) Penalty.—
16	(1) In general.—Subject to paragraph (2),
17	whoever violates this section shall be fined \$500 for
18	the first such violation and \$1,500 for each subse-
19	quent violation.
20	(2) Information about minors.—Whoever
21	commits a violation of a regulation issued under
22	subsection (b)(1)(C) shall be fined twice the amount
23	of the fine that would otherwise apply under this
24	subsection if such violation results in the trans-

1	mission from a computer of information that is iden-
2	tifiable to—
3	(A) an individual who operates that com-
4	puter and has not attained 18 years of age; or
5	(B) that computer if a primary user of
6	that computer is an individual who has not at-
7	tained such age.
8	(3) Subsequent violations.—Each violation
9	of a regulation issued under subsection (b)(1), in-
10	cluding each transmission of information in violation
11	of subsection (b)(1)(C), constitutes a separate viola-
12	tion for purposes of this subsection.
13	(e) Definitions.—For purposes of this section:
14	(1) Computer.—The term "computer" means
15	a programmable electronically activated device
16	that—
17	(A) is capable of accepting information,
18	applying prescribed processes to the informa-
19	tion, and supplying the results of those proc-
20	esses with or without human intervention; and
21	(B) consists of a central processing unit
22	containing extensive storage, logic, and control
23	capabilities.

(2) Information collection device.—The
term "information collection device" means any de-
vice that—

- (A) is a computer program that is capable of collecting and transmitting from a computer to a person other than a primary user of that computer, information that is identifiable to that computer, to a primary user of that computer, or to an individual who operates that computer but is not a primary user thereof; and
- (B) does not consist of only a simple identifying string of computer code, commonly referred to as a "cookie".
- (3) Primary user.—The term "primary user" means any individual with general authority over management and use of a computer or any person on whose behalf an individual exercises such general authority.

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